

REMARKS

Applicant has amended claims 1 and 14 to remove improper idiomatic English and to modify the scope of the claims based upon the comments of the Examiner. Claims 3 and 4 have also been amended to improve the clarity of the Claims 5, 12 and 17 have been cancelled.

The rejection of claims 1-15, 12, 14, 15 and 17 under 35 USC 112, first paragraph, is respectfully traversed.

Applicant has amended independent claims 1 and 14 to define a pharmaceutical composition and a healthcare food, respectively, for treating and alleviating constipation and intestinal disease caused by microorganism(s). The amended claims do not cover a composition to prevent intestinal disease and constipation and accordingly are now consistent with the requirements of 35 USC 112, first paragraph, and are enabling for the treatment specified. The amendments were made consistent with the remarks of the Examiner in paragraph 7 of the Official Action. Claims 2-5 are dependent claims. Accordingly, the rejection under 35 USC 112, first paragraph, should be withdrawn.

The rejection of claims 1-5, 12, 14, 15 and 17 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is respectfully traversed. Applicant has amended claims 1, 3, 4, and 14 and has cancelled claims

5, 12, 15 and 17. The remaining claims are withdrawn from consideration consistent with the election following the Notification Requirement.

Applicant has amended claim 1 to overcome the rejection based upon indefinite subject matter and to make the scope of the claim clear and succinct. The word “essentially” has also been deleted. Accordingly, the currently amended version of claim 1 is now believed to satisfy all of the requirements of 35 USC 112 and the rejection therefore should be withdrawn. The same is true for claim 14, which has now been amended to clarify the scope of the claims and to limit the claim to an extract of the same plants identified in claim 1.

Claims 3 and 4 have also been amended to overcome the objections thereto. Accordingly, all of the claims are now believed to satisfy the requirement of 35 USC 112, second paragraph, and the rejection thereof should be withdrawn.

The rejection of claims 1, 3-5, 12, 14, 15 and 17 under 35 USC 102(b) as being anticipated by US Patent No. 6,299,925 is respectfully traversed.

Claims 1 and 14 have been amended to define the components of the active ingredient, i.e., as either a pharmaceutical composition or a healthcare food, respectively, with each comprising an extract of the plants radish, tea leaf, *Daucus carota* var *sativa*, and at least one extract of plant selected from the group consisting of: *Aurantii nobilis* Pericarpium, *Aurantii immatri* Pericarpium, *Ficus carica* L., *Allium cepa* L, *Mume Fructus* and *Prunus armeniaca* as an effective ingredient in an

effective amount to treat and alleviate constipation and intestinal disease caused by microorganism(s). Microorganisms such as, for example, Escherichia coli and salmonella tythimurium, are clearly supported in the specification (see paragraphs [0028] – [0032]).

The cited reference USP 6,299,925 teaches a formulation of a natural product containing a concentrated green tea extract capable of being administered in liquid form with, for example, alka seltzer, to increase the formulations absorption rate and bio-availability for a therapeutic extract contained therein. There is no teaching in this reference of a pharmaceutical composition or a healthcare food as claimed in claims 1 and 14 for use as an active ingredient in the treatment and alleviation of constipation and intestinal disease caused by micro-organism(s). The active ingredient in USP 6,299,925 is concentrated green tea which contains an abundant of polyphenol content as a main component in addition to a vegetable extract selected from carrot, celery, cucumber, eggplant, green bean, lettuce, onion, parsley, pea, potato, pumpkin, radish, etc., functioning as an alternative minor component and other formulating components to increase the absorption rate and bio-availability of the product. The other components may include sodium carbonate, anhydrous citric acid, PEG, etc. Clearly, there is no teaching or suggestion in this reference of any pharmacological activity for the treatment of intestinal disease and constipation.

For all of the above reasons, claim 1, 3-4 and 14 are clearly believed to be patentable over the teaching in USP 6,299,925 and the rejection thereof under 35 USC 102 should be withdrawn.

The rejection of claims 1 and 2 under 35 USC 103(a) as being unpatentable over USP 6,299,925 in view of the Merriam Webster's Collegiate Dictionary (10th ed. (1997) page 964) is respectfully traversed.

The definition provided in Merriam Webster's Collegiate Dictionary page 964 defines a radish as a pungent, fleshy root of a widely-cultivated Eurasian plant (*Raphanus sativus*) of the mustard family. This teaching does not supplement the teaching of U.S. Patent 6,299,925 to provide any suggestion of a pharmaceutical activity for the plant extract taught in reference '925 to treat intestinal disease and constipation caused by microorganism(s). Accordingly, there is no basis for the allegation that claim 1 is obvious over U.S. Patent 6,299,925 in combination with the definition in the Collegiate Dictionary of a radish.

The rejection of claims 14 and 17 under 35 USC 103(a) as being unpatentable over USP 6,299,925 is respectfully traversed.

Claim 14 has been amended and claim 17 cancelled. As now amended, claim 14 recites a healthcare food comprising an extract of plants selected from the group as set forth in claim 14, together with a pharmaceutically acceptable additive for use in the treatment and alleviation of constipation and

intestinal disease caused by microorganisms. This is not taught or suggested in the cited reference.

For all of the above reasons, the rejection of claim 14 as being unpatentable over USP 6,299,925 under 35 USC 103 should be withdrawn.

Reconsideration and allowance of claims 1-4 and 14, is respectfully solicited.

Respectfully submitted,
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I hereby certify that this Amendment is being deposited with the United States Postal Service under 37 CFR 1.10 and is addressed to the Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450 on Aug 4, 2005.


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